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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 600

IN THE MATTER OF THE PEORIA AND EASTERN RAILWAY COMPANY

CHARLES S. ARONSTAM,

Petitioner,

vs.

THE NEW YORK CENTRAL RAILROAD COMPANY, THE CLEVELAND, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY AND THE PEORIA AND EASTERN RAILWAY COMPANY,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

CHARLES S. ARONSTAM,
ARTHUR A. BALLANTINE,
JOHN M. HARLAN,
Counsel for Petitioner.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

The petitioner, Charles S. Aronstam, respectfully prays that a writ of certiorari issue to the United States District Court for the Southern District of New York, to review the final order of that Court, sitting as a three-judge Special Court, entered on December 28, 1948, in the Railroad Adjust-

ment Proceeding entitled In the Matter of The Peoria and Eastern Railway Company (R. 73-75).

Opinion Below

The Per Curiam opinion of the Special Court in connection with the order of December 28, 1948 appears at R. 99-103 and is not yet reported.

Statutes Involved

This proceeding was had under Chapter XV of the Bankruptcy Act, as enacted in 53 Stat. 1134 (1939). The following are the pertinent provisions of Chapter XV:

> "Sec. 713. Immediately following the filing of the petition, there shall be convened a special court of three judges in the manner provided by section 266, as amended, of the Judicial Code, and thereafter all proceedings relative to such plan or any modification thereof shall be conducted before such court. Such three-judge court shall be vested with and shall exercise all the powers of a district court sitting in equity and all the powers as a court of bankruptcy necessary to carry out the intent and provisions of this chapter, including the classification of claims at such time and in such manner as the court may direct."
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> "Sec. 725. If the special court shall find—
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> "(6) That, after hearings for the purpose, all amounts or considerations, directly or indirectly paid or to be paid by or for the petitioner for expenses, fees, reimbursement or compensation of any character whatsoever incurred in connection with the proceeding and plan, or preliminary thereto or in aid thereof, together with all the facts and circumstances relating to the incurring thereof, have been fully disclosed to the Court

so far as such amounts or considerations can be ascertained at the time of such hearings, that all such amounts or considerations are fair and reasonable, and to the extent that any such amounts or considerations are not then ascertainable, the same are to be so disclosed to the Court when ascertained, and are to be subject to approval by the special court as fair and reasonable, and except with such approval no amounts or considerations covered by this clause (6) shall be paid."

Statement of Matter Involved [1]

The Special Court has denied to petitioner an allowance for services together with disbursements, chargeable to the P & E, the debtor in this Chapter XV Railroad Adjustment Proceeding and a controlled subsidiary of the Operating Companies. These services were rendered by petitioner, pursuant to an earlier Order of the Special Court, on behalf of the P & E, in resisting a claim of the Operating Companies against it. The merits with respect to the Special Court's allowance of the greater part of this claim are now before this Court in a petition for certiorari (No. 511) filed by the Income Bondholders on January 14, 1949. A more detailed statement of the facts underlying this proceeding may be found in that petition, pages 3 to 18 inclusive.

Since the inception of the P & E in 1890, the Operating Companies have dominated and controlled its affairs by reason of a majority stock ownership and the provisions of an Operating Agreement (R. 12, 33).

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[1] The following abbreviations of names of the parties are used in this petition.

P & E—the respondent, The Peoria and Eastern Railway Company.

Operating Companies—The New York Central Railroad Company and its controlled subsidiary, The Cleveland, Cincinnati, Chicago and St. Louis Railway Company.

Income Bondholders—The holders of the P & E's Second Mortgage noncumulative 4% Income Bonds, due 1990.

In 1940, the Operating Companies caused the P & E to institute a proceeding for an adjustment of its debts under Chapter XV. The Special Court approved the Plan of Adjustment,[2] but left open the question whether the claim of the Operating Companies against the P & E, amounting to approximately $2,500,000, was valid (R. 8-10, 34-35). In those proceedings, petitioner represented the Income Bondholders Protective Committee, which had intervened therein (R. 70).

In 1943, the Operating Companies petitioned the Special Court for the appointment of a Special Master to hear and report as to the amount and validity of the intercompany accounts between the Operating Companies and the P & E (R. 2-11).

The District Court granted the petition and in its Order of Reference, dated May 21, 1943, appointed Francis H. Horan, Esq., as Special Master (R. 13-14). In said Order the Court designated petitioner to represent the Income Bondholders and empowered him, with the approval of the Special Master, to employ accountants and traffic experts to assist him.[3]

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[2] *Ewen* v. *Peoria & E. Ry. Co.* 34 F. Supp. 332 (S.D.N.Y., 1940), cert. denied 311 U.S. 700 (1940).

[3] The Order with respect to petitioner provided:—

"Ordered that Charles S. Aronstam, counsel for the Income Bondholders' Protective Committee be and is hereby designated as counsel to represent the Income Bondholders of The Peoria and Eastern Railway Company in these proceedings before the Special Master, and that the said counsel with the approval of the Special Master may employ accountants and traffic experts to assist him in connection therewith, and it is further

"Ordered that the compensation of Charles S. Aronstam as counsel for the Income Bondholders and of the accountants and traffic experts, together with the necessary disbursements of said representation, [shall be borne and paid by the Peoria and Eastern Railway Company in such amounts as] * shall be approved and determined by the Court." (R. 14.)

The Special Court at the time it signed the Order gave no explanation as to why it eliminated the provision that the compensation of petitioner

* Struck out in copy.

On June 21, 1943, petitioner, with the approval of the Special Master, retained the firm of Eppler & Company (later merged with Peat, Marwick, Mitchell & Co.) accountants and traffic experts to assist him in the investigation of the intercompany accounts (R. 25-29). Eppler & Company had been suggested to petitioner by the Operating Companies (R. 26).

Thereafter, the Operating Companies, through their own counsel, caused the P & E to apply to the Special Court for permission to retain F. W. H. Adams, Esq., as counsel, to represent it in this proceeding (R. 15-17; cf. R. 11 with R. 17). The Court approved such retention in its Order of July 2, 1943 (R. 22). Thus, the Operating Companies, the creditors herein, were permitted by the Special Court to select the counsel for their adversary, the P & E, in the proceeding to determine the amount and validity of their claim.

In 1943 and 1944, Eppler & Company made a comprehensive study of the intercompany accounts which disclosed, according to the Report submitted by them, that instead of the P & E being indebted to the Operating Companies in the sum of $2,500,000, they owed the P & E an amount in excess of $10,000,000, exclusive of interest (R. 37).

Thereafter, between February 1945[4] and July 1946, hearings were held before the Special Master. Petitioner, acting under the Order of May 21, 1943, carried the bur-

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and the accountants should be paid by the P & E. This modification clearly could not have been intended as, and was not in fact, a bar to charging the P & E with the compensation of petitioner and his accountants and traffic experts, since the Special Court has now charged the P & E with a portion of the compensation of petitioner's accountants and traffic experts, Eppler and Company (R. 71-73). Under the Special Court's Order above quoted, Eppler and Company can have no greater standing to be compensated by the P & E than petitioner.

[4] Since January 1945, Arthur A. Ballantine of the firm of Root, Ballantine, Harlan, Bushby and Palmer, as attorney for an Income Bondholder who owns approximately 25% of the principal amount of the Income Bonds, has been associated with petitioner in this proceeding (R. 38-39).

den of introducing evidence on behalf of the P & E in support of the Income Bondholders' contention that the Operating Companies' accounts with the P & E should be surcharged in an amount in excess of $10,000,000. This evidence was based upon the findings contained in the Eppler Report.

Although the positions taken by the Income Bondholders before the Special Master and the Special Court were exclusively in the interest of the P & E as a whole, nevertheless, on most of the issues, they were opposed by Mr. Adams as counsel for the P & E.

The Special Master and the Special Court, consisting of Circuit Judge L. Hand and District Judges Coxe and Hincks, upheld to a large extent the claim of the Operating Companies. The opinions of the District Court with respect thereto are reported at 78 F. Supp. 312.

Under date of September 29, 1948, petitioner filed an application on behalf of Eppler and Company with the District Court for the approval and payment of the bill of Eppler and Company for their services, in the sum of $119,451.86 (R. 23-32). Under date of December 4, 1948, petitioner filed an application for an allowance for his services in the sum of $90,000; for disbursements in the sum of $30,228.30; and for approval and payment of the bills of Coverdale & Colpitts (consulting engineers) in the sum of $10,092.53, and William Wyer & Co. (railroad management consultants) in the sum of $3,069.55 (R. 32-49). These firms at the request of petitioner, had given expert testimony before the Special Master with respect to certain of the items in the intercompany accounts which were in dispute (R. 44-45).

Under date of November 26, 1948, Mr. Adams filed an application requesting $55,000 for his services (R. 61-69), which amount had been accepted by the dominated P & E, subject to the approval of the Special Court (R. 67).

Decision of the Special Court on the Allowances

The Special Court, in its Per Curiam opinion, held that there was a question as to whether it had jurisdiction to grant an allowance to petitioner, as a charge against the P & E. The Special Court further held that it was unnecessary to decide the jurisdictional problem, for even if it had power it would not grant an allowance to petitioner as a charge against the P & E, because the P & E was "adequately represented" in the accounting phase of this proceeding (R. 71). Consequently, the Special Court denied the application of petitioner for an allowance and disbursements (R. 71), although it recognized that petitioner's services were rendered solely on behalf of the "entire Peoria estate vis-a-vis the New York Central" (R. 71). The Special Court also disallowed the payment of the bills of Coverdale and Colpitts and William Wyer & Co. which were appended to petitioner's application (R. 71).

The Special Court allowed Eppler and Company, who had been retained by petitioner to assist him, $72,073.44 as a proper charge against the P & E, but disallowed the balance of its bill, of $47,005.16[5] (R. 71-73). Mr. Adams, as counsel for the P & E, was allowed $32,000 for his services (R. 70).

Jurisdiction

The order denying petitioner compensation and reimbursement for expenses incurred as against the P & E was entered on December 28, 1948. The jurisdiction of this Court is invoked under §745 of the Bankruptcy Act, as added by ch. 393 of the Laws of 1939, 53 Stat. 1134, 1141. Section 745 provides for review directly to this Court of a final order of the Special Court, on petition for certiorari

[5] Eppler and Company are filing herewith a separate petition for certiorari.

by any person affected by the plan who deems himself aggrieved.[6]

The ascertainment of the amount and validity of the intercompany accounts, which the District Court left open for future determination in its Decree on the Plan of Adjustment was an essential part thereof (R. 34-35). The validity of the claims of the Operating Companies was of the essence of the Plan of Adjustment, and whether the Plan was "in the public interest and in the best interests of each class of creditors and stockholders", Bankruptcy Act, §§ 710 (2) (c) (i), 725 (3), 53 Stat. 1135, 1138. The services for which petitioner seeks an allowance from the P & E were rendered wholly in connection with the settlement of the intercompany accounts between the Operating Companies and the P & E.

Section 725 (6) of the Bankruptcy Act provides that the Special Court may approve a Plan of Adjustment, only if it finds that all fees, expenses, reimbursement or compensation to be paid by the debtor railroad are fair and reasonable. Consequently, the approval or disapproval of the expenses of the debtor railroad is an integral part of the Plan. Similarly, in *Leiman* v. *Guttman* (No. 88-October Term 1948, decided January 17, 1949) this Court said:

> "• • • The incidence of fees on reorganization plans is so great that control over them is deemed indispensable to the court's determination whether the plan should be confirmed. Section 221 (4) provides, indeed, one of the standards by which the court makes that determination."

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[6] Section 745 provides:

"Any final order or decree of the special court may be reviewed by the Supreme Court of the United States upon application for certiorari made by any person affected by the plan who deems himself aggrieved within sixty days after the entry of such order or decree, pursuant to the provisions of the Federal Judicial Code."

Section 725 (6) of Chapter XV is analogous to Section 221 (4) of Chapter X of the Bankruptcy Act (52 Stat. 897).

Petitioner is aggrieved by the denial of the Special Court to allow him compensation and disbursements as against the P & E for services which he rendered to the P & E in connection with its Plan of Adjustment.

Question Presented

Was the Special Court correct in holding under Chapter XV of the Bankruptcy Act, that it should not award compensation and disbursements to petitioner as a charge against the P & E, for services which he concededly rendered for and on behalf of P & E in resisting a claim asserted against it by the Operating Companies, which dominated and controlled it?

Reasons Relied on for Allowance of Writ

The Special Court, in refusing an allowance to petitioner chargeable against the P & E, for his services on its behalf, has rendered an important but erroneous decision which should be reviewed here.

Section 713 of Chapter XV provides that the Special Court "shall be vested with and shall exercise all the powers of a district court sitting in equity and all the powers as a court of bankruptcy necessary to carry out the intent and provisions of this chapter" and Section 725 (6) provides that all amounts "directly or indirectly paid or to be paid by or for the petitioner [debtor railroad] for expenses, fees, reimbursement or compensation of any character whatsoever incurred in connection with the proceeding and plan" are "subject to approval by the special court as fair and reasonable".

1. *The Special Court had jurisdiction to grant petitioner an allowance chargeable against the P & E.*

The Special Court left open the question as to whether it had jurisdiction to grant an allowance to petitioner. The respondents will undoubtedly argue that there was no jurisdiction, relying upon the two decisions the Special Court made with respect to applications of intervenors, who participated in the proceedings upon the Plan of Adjustment. *In re Peoria and Eastern Railway Company,* 37 F. Supp. 917 (1941), cert. denied 314 U. S. 635 and 49 F. Supp. 83 (1943). Those decisions are inapplicable to the present proceeding.

The intervenors, who sought allowances in those decisions, represented only classes of security holders and their efforts were expended in safeguarding and protecting the respective interests of the security holders they represented in the Plan of Adjustment. The Special Court held that it was without jurisdiction under Chapter XV to make allowances out of the debtor railroad for services rendered in the interests of security holders *vis-a-vis* the estate.

In the instant proceeding the situation is entirely different. Here, as will be more fully shown hereinafter, petitioner rendered his services exclusively for the benefit of the P & E, as an entity, in an adversary proceeding with the Operating Companies for the determination of the amount and validity of the intercompany accounts. Moreover, petitioner was not an intervenor or volunteer, but performed his services for the benefit of the P & E, as a whole, by designation of the Special Court in its Order of May 21, 1943 (R. 13-14).

Although the Special Court said that it left open the question of whether it had jurisdiction to grant an allowance to petitioner for his services to the P & E, actually it decided that it had such power. This is demonstrated by

the fact that the Special Court allowed, as a P & E expense, a substantial portion of the bill of Eppler and Company on the ground "that it constituted service to the debtor and should be treated as an item of expense to the debtor" (R. 72). The payment to Eppler & Company shows that the Special Court recognized that it had jurisdiction, under Chapter XV, to award allowances for services rendered to the P & E, even though the person rendering such service was not the titular representative of the P & E.

Eppler and Company was retained by petitioner to assist him in these proceedings, pursuant to the authority given to him by the Special Court. Obviously, if the Special Court had jurisdiction to compensate Eppler & Company for services rendered to the P & E, it had equal jurisdiction to allow petitioner compensation for his services to the P & E.

2. *Petitioner having rendered his services exclusively for and on behalf of the P & E should be compensated by the P & E.*

The Special Court held that even if it had jurisdiction to make an allowance to petitioner, it would not do so because the P & E was "adequately represented" in the accounting phase of this proceeding (R. 71). In so holding, the Special Court completely disregarded the fact that it was the Income Bondholders, through petitioner, who protected and sought to enhance the interests of the P & E and not the counsel who had been designated to represent it by the Operating Companies.

At the time the Special Court signed the Order of Reference and designated petitioner to represent the Income Bondholders, the P & E was completely dominated and controlled by the Operating Companies and did not have counsel to represent it independently in the contemplated adversary proceeding. Since the adversaries were the P & E and the Operating Companies, the Court could have in-

tended only that petitioner's services, as counsel for the Income Bondholders, would be on behalf of the P & E.[7] Otherwise, there would have been no purpose for the Special Court to have designated petitioner to act in the proceeding, because the rights of the Income Bondholders, as a separate class of security holders, were not involved. The participation of the Income Bondholders, derivatively on behalf of the P & E, insured that the P & E and all its public security holders would be represented independently in the adversary proceeding. Petitioner thereupon had the duty and obligation as an officer of the Special Court, to protect and prosecute the interests of the P & E.

It was only after the proceeding had commenced and Eppler and Company had started its investigation of the intercompany accounts, that the Operating Companies sought and obtained the approval of the Special Court to have Mr. Adams act as counsel for the P & E (R. 20-22). Mr. Adams thereafter attempted to prevent petitioner from speaking on behalf of the P & E, but the Special Master rejected such attempt in the following language (R. 39-40):

> "In the light of the original proceeding herein in which Mr. Aronstam [petitioner] was allowed to intervene, and in the light of the order appointing him counsel for the Income Bondholders, it would seem reasonable to think that the court intended that when the New York Central undertook in this proceeding to demonstrate the 'amount and validity' of its claims against the Peoria Mr. Aronstam should be the watchdog to see that the demonstration was adequate."
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> "• • •. I do not believe that the court, which was well acquainted with the case when Mr. Aronstam

[7] The Special Master in his report said:
"• • • that under the Order of reference the adversaries were the P & E and the Operating Companies • • •" (R. 36).

> was appointed in this proceeding, showed by its later approval of the engagement of Mr. Adams that Mr. Aronstam was to have diminished participation in the general overhauling of the accounts which was envisaged by Section 24 of the Supplemental Order."

Mr. Adams rejected almost *in toto* the Eppler Report (R. 72) which showed that instead of the P & E being indebted to the Operating Companies in the approximate sum of $2,500,000, they were in fact indebted to the P & E in a sum in excess of $10,000,000 (R. 37). Mr. Adams' action placed the burden squarely upon petitioner, in accordance with his Court appointed duty, to present in evidentiary form to the Special Master the facts and findings of the Eppler Report, so as to refute the claim of the Operating Companies against the P & E. As the Special Master said (R. 40):

> "It is not, and of course it could not be, Mr. Adams' view that in an accounting proceeding of this character, carried out under Section 24 of the Supplemental Order, *he could say that he had satisfied himself that everything was in order and thus foreclose any further inquiry into the accounts.*" (Emphasis supplied.)

The basic issue in the accounting phase of this proceeding was the question of whether the Operating Companies, by reason of their control and domination of the P & E, were bound in their self-dealing transactions with the P & E by the usual fiduciary standards as enunciated by this Court.[8] Petitioner before the Special Court, urged that the intercompany accounts must be scrutinized in the light of whether the Operating Companies, as fiduciaries, were fair to the P & E in the determination of its income and expenses. Mr. Adams, as counsel for the P & E, contended

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[8] *Geddes* v. *Anaconda Mining Co.*, 254 U. S. 590 (1921); *Pepper* v. *Litton*, 308 U. S. 295, 306 (1939); see also, *Chelrob, Inc.* v. *Barrett*, 293 N. Y. 442, 57 N. E. (2d) 825 (1944).

that the Operating Companies were not bound by the usual fiduciary standards. In the brief that he filed with respect to the petition of certiorari of the Income Bondholders to this Court (No. 511) on the merits, he stated that the Operating Companies did not have any fiduciary duty to the P & E (Brief of the P & E, p. 16). Thus again it should be observed that petitioner has had the burden of protecting the interests of the P & E.

Furthermore, it is pertinent to note that Mr. Adams' appointment to represent the P & E did not provide him with authority to retain independent accountants and traffic experts (R. 22); in fact, he made no independent investigation of the accounts but only consulted officials of the P & E and the Operating Companies (R. 64).[9] It is an admitted fact that the P & E does not have any officials of its own, apart from the Income Bondholder Director, Mr. McInerney, as all its other personnel are employees of the Operating Companies. Mr. Adams did not consult with Mr. McInerney at any time during the proceeding.[10]

The voluminous evidence that petitioner introduced before the Special Master [11] which was based on the Eppler Report, sought to establish that the methods used by the Operating Companies to ascertain the earnings of the P & E were improper, and such a finding by the Special Court would have resulted not only in the Operating Companies being surcharged in an amount exceeding $10,000,000, but would have had far-reaching effects upon the future financial security of the P & E.

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[9] The only independent investigation of the intercompany accounts was made by Eppler and Company, which investigation was made in close cooperation with petitioner (R. 72).

[10] Nor was Mr. McInerney consulted by the Operating Companies with respect to the selection of Mr. Adams to act as counsel for the P & E (R. 55).

[11] The record consisted of 4012 pages of testimony and 577 exhibits, many of which were lengthy and complicated (R. 43).

The opinions of the Special Court on the merits of the controversy reported at 78 F. Supp. 312, clearly demonstrate that petitioner's positions, asserted on behalf of the P & E, were bona fide and in its best interests.

In the light of the foregoing, the Special Court's finding that petitioner could not be compensated out of the P & E estate because it was "adequately represented" is without any basis in fact. Throughout the proceeding, it has been the Income Bondholders, through petitioner, who have sought to protect the interests of the P & E, and not counsel for the P & E. Nor can it be said that the petitioner's services were duplicative of those performed by counsel for P & E, because as shown above, on almost all issues advanced by petitioner for the P & E, he was opposed by counsel for the P & E.

In *Seibert* v. *Minneapolis & St. Louis Ry. Co.*, 58 Minn. 58, 57 N. W. 1068 (1894), the Court said at page 64:

> "And if, for any reason, the bondholders are permitted to appear in the action for the purpose of protecting the trust property, and do, in whole or in part, what the trustee might have thus done, it seems to us that there can be no doubt of the power of the court, upon a proper showing, to make the same reimbursement to them which it might have made to the trustee had he performed the same services and incurred similar expenses."

In *In re Watco Corporation*, 95 F. (2d) 249 (C. C. A. 7th, 1938), the Court said at page 251:

> "* * * it is as important that fees for meritorious services actually rendered and necessary to effectuate a reorganization should be allowed as it is that the court should prevent the undue enrichment of attorneys for services of no value to the debtor."

In the instant case, petitioner, as an officer of the Special Court, pursuant to its Order, performed his services for the

P & E, seeking, as the Special Court recognized, "to advance the interests not of the bondholders alone but of the entire Peoria estate vis-a-vis the New York Central" (R. 71). Likewise, the services of Coverdale and Colpitts and William Wyer & Co. were for and on behalf of the P & E. Their services were necessary and essential in connection with the proper presentation of the items upon which they testified.[12] If the contentions of the Income Bondholders on these items had been upheld, the testimony of these experts would be vital to determine the amounts of surcharge against the Operating Companies in favor of the P & E, and their bills should be paid by the P & E.

Petitioner performed his services over a period of five years and incurred disbursements of more than $30,000 upon the belief and faith that the Special Court intended by its Order to have petitioner protect and safeguard the interests of the P & E in the accounting phase of this proceeding, and that he and his witnesses would be compensated therefor by the P & E. The suggestion by the Special Court that petitioner's only recourse for compensation and disbursement was against the Income Bondholders, would result in one class of security holders paying for services which were rendered for the entire estate of the P & E.

This Court has always considered the payment of fees to counsel in a proper cause an important part of judicial administration. In *Sprague* v. *Ticonic National Bank*, 307 U. S. 161 (1939), this Court said:

> "Allowance of such costs in appropriate situations is part of the historic equity jurisdiction of the federal courts" (at p. 164).

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[12] The Coverdale and Colpitts witnesses testified that on sales of second hand equipment (freight cars and locomotives) by the Operating Companies to the P & E, the latter had been overcharged $464,952; William Wyer testified that the value of the Indianapolis trackage rights which the Operating Companies acquired from the P & E without paying any consideration was $100,000 (R. 44-45).

"• • • Plainly the foundation for the historic practice of granting reimbursement for the costs of litigation other than the conventional taxable costs is part of the original authority of the chancellor to do equity in a particular situation" (at p. 166).

"• • • As in much else that pertains to equitable jurisdiction, individualization in the exercise of a discretionary power will alone retain equity as a living system and save it from sterility. In the actual exercise of the power to award costs 'as between solicitor and client' all sorts of practical distinctions have been taken in distributing the costs of the burden of the litigation" (at p. 167).

Conclusion

The refusal of the Special Court to compensate petitioner for his services together with his disbursements, including the bills of Coverdale and Colpitts and William Wyer & Co. as a charge against the P & E is tantamount to a repudiation by the Special Court of its own Order and so far departs from sound equitable principles as to call for the exercise of this Court's power of supervision; this being the only Court having appellate jurisdiction to review the grave injustice contained in the Special Court's Order of December 28, 1948.

WHEREFORE, it is respectfully submitted that this petition for certiorari to review the final order of the Special District Court for the Southern District of New York should be granted.

CHARLES S. ARONSTAM,
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JOHN M. HARLAN,
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